

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6261

BILL NUMBER: SB 366

NOTE PREPARED: Dec 14, 2006

BILL AMENDED:

SUBJECT: Imposition of Death Penalty by Judge.

FIRST AUTHOR: Sen. Bowser

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill prohibits a court from imposing a death sentence if the jury is unable to agree on a sentence recommendation during the penalty phase.

Effective Date: July 1, 2007.

Explanation of State Expenditures: This bill could result in added state expenditures if a court may not impose a death sentence when a jury is unable to recommend a death sentence.

Under current law, if a jury cannot agree on a recommended death sentence to a court in a murder trial, the court may dismiss the jury and impose whatever sentence the court determines to be appropriate. One of the sentencing options would be a death penalty. This bill would restrict a court to sentence a defendant to either life imprisonment without parole or sentence the defendant to a term of years.

State expenditures depend on the outcome of the criminal trial. If a prosecuting attorney requests the death penalty and the court imposes a death sentence on a defendant, then state expenditures will be less than when a prosecuting attorney seeks and the court imposes life imprisonment without parole. A determinant sentence of 65 years where the offender is released after 32 years for good behavior requires less expenditures than the other two sentences.

LSA staff compared the state's after-trial costs in this analysis for a hypothetical 30-year-old offender. (The average age of 84 offenders who were sentenced to death was 30 at the time when a request for a death penalty was made against them.) The post-trial expenditures are incurred by the Office of the Attorney General, the Department of Correction (DOC), the State Public Defender, the State Police, and the Public

Defender Commission, which reimburses counties for a percentage of the costs of representing a defendant in a direct appeals case.

Because these costs occur at different points in time, a net present value was calculated for each cost stream assuming an annual inflation rate of 5%. The following table presents the total costs for each sentence option.

Estimated State Expenditures of Sentencing Outcomes for a 30-Year-Old Offender Convicted of Aggravated Murder in a Death Penalty Trial	
Sentence Option	Net Present Value
Death Penalty*	\$532,305
Life Without Parole	\$647,664
65 Years with 50% Credit Time	\$515,672
* No longer available in certain circumstances by this provision.	

Background Information: In this analysis, LSA staff compared the state costs for state assistance to the counties in the trial stage, and the staff costs during direct appeal, post conviction relief, and federal habeas corpus review.

LSA assumed that convicted offenders would:

- spend an average period of 16 years on death row before being executed if the death penalty was imposed;
- serve 32 years of a sentence if sentenced to 65 years in prison since most offenders reduce their sentences by one day for each day that they comply with prison facility codes of behavior;
- remain in DOC facilities until the age of 77 if sentenced to life without parole.

These variables are included in this analysis:

Cost of Health Care Will Increase Significantly – It is assumed that the health care costs to the DOC will increase substantially for older offenders. The data in the following table was used to account for the added cost to DOC for the later years of an offender who is sentenced to life without parole.

Estimated Costs of Health Care by Age Group	
Age Group	Estimated Cost
18-24	\$1,095
25-44	\$1,844
45-64	\$4,319
Over 65	\$8,589

Cost of Incarceration – The average annual expenditure for housing offenders (not including health care costs) is based on the average annual adult institution cost in FY 2006 of \$22,734 less the average annual

health care costs of \$2,029.

Reduced Costs of Appeals - The cost of representing a defendant on direct appeal, in post conviction relief, and in federal habeas corpus stages is significantly less for life without parole and determinant sentencing.

The three general stages of review of criminal cases at the state and federal level include direct appeal and post conviction relief at the state level and habeas corpus at the federal level. The Office of the Attorney General represents the state in all three stages of review in death penalty cases. The State Public Defender's office represents convicted offenders requesting indigent counsel in post conviction relief.

The following costs were used to compare these sentencing options.

State Agency	Function	Death Penalty Trial	Life Without Parole
State Public Defender	Represents convicted offenders requesting indigent counsel in post conviction relief	\$191,182	\$3,724
Office of the Attorney General	Represents the state in all three stages of review in death penalty cases	\$72,503	\$12,004

The following shows the stages of review once the death penalty trial has been completed.

Review Level	Court of Review	Issues Permitted to be Raised
Direct Appeal	State Supreme Court	Defendant required to show that what happened at trial was legally erroneous. Defendant may not present new evidence.
Post Conviction Relief (PCR)	Trial Court	Newly discovered evidence such as DNA and other issues may be presented.
Subsequent Appeal of PCR	State Supreme Court	Decides on the evidence presented at the PCR review.
Federal Habeas Corpus Review	Seventh Circuit Court of Appeals	Federal courts may not grant relief if the claim was waived in the state court or if the issue was not presented or properly presented in state court.

See also *Explanation of Local Expenditures*.

Explanation of State Revenues:

Explanation of Local Expenditures: This bill would reduce the costs to a county when a defendant appeals a sentence of either life without parole or a maximum 65-year sentence rather than a death sentence.

The following compares the costs of appeal to a county for a case where the death penalty was requested and where the most serious sentence that can be imposed would be life without parole.

Cost Components for Murder Trials		
	Death Penalty	Life Without Parole
Cost of Appeals	\$54,355	\$5,466
*Net Costs After Reimbursement From Public Defense Fund.		

This bill could affect 12 death penalty trials either pending or in progress in seven counties.

Death Penalty Trials Pending or in Process by County	
County	Number of Trials
Allen	1
Delaware	1
Grant	1
Lake	5
Madison	1
Marion	2
Miami	1
Total	12

Explanation of Local Revenues:

State Agencies Affected: Department of Correction, Office of the Attorney General, Office of the State Public Defender, State Police.

Local Agencies Affected: Trial courts; County sheriff.

Information Sources: Indiana Supreme Court; *The Application of Indiana's Capital Sentencing Law, Findings of the Indiana Criminal Law Study Commission* (January 10, 2002); Website of Clark County (IN) Prosecuting Attorney, <http://www.clarkprosecutor.org/html/death/>; Agency for Healthcare Research and Quality, *2002 Full-Year Consolidated Data File (HC-070)*, Released December 2004, Medical Expenditure Panel Survey Household Component Data, Generated using MEPSnet/HC. <<http://www.meps.ahrq.gov/mepsnet/HC/MEPSnetHC.asp>>; Department of Correction.

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